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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,350	11/21/2003	Vance M. Smith	4313-031012	3308

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,350

Applicant(s)

SMITH, VANCE M.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 45-48 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-19 and 45-48 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-19 and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane (U.S. 3,907,349) in view of Koziczowski et al. (U.S. 5,411,162). Kane teaches a container assembly having a container body 10, a cover 11, a split ring 20 and locking device at 27. Kane also teaches an outer seal at 19 made of polyvinylchloride, however this layer is not a coating. Koziczowski et al. teaches that it is known to provide a coating on a split ring (see coating 92). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container assembly of Kane with the outer seal being a coating, as taught by Koziczowski et al., in order to assemble the container with fewer parts by having the outer seal permanently attached to the split ring.

Regarding claims 6 and 16, Kane also does not disclose the thickness of the polymeric coating. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container assembly of Kane with the polymeric coating having a thickness between about 15-30 mils, since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claims 9 and 19, Kane also does not disclose the thickness of the layers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

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modified container assembly of Kane with the base layer having a thickness of up to about 1 mil, and the top layer having a thickness of between about 15 and 25 mils, since it has been held that “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

3. Claims 1-19 and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koziczowski et al. (U.S. 5,411,162) in view of Kane (U.S. 3,907,349). Koziczowski et al. teaches a container assembly having a container body 14, a cover 16, a split ring 20 and locking device at 22. Koziczowski et al. also teaches a coating at 92, however this coating is not polymeric. Kane teaches that it is known to provide a polyvinylchloride layer between a ring and cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container assembly of Koziczowski et al. with the coating being polyvinylchloride, as taught by Kane, for the resilience and corrosion resistance characteristic of polyvinylchloride.

Regarding claims 6 and 16, Koziczowski et al. also does not disclose the thickness of the polymeric coating. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container assembly of Koziczowski et al. with the polymeric coating having a thickness between about 15-30 mils, since it has been held that “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

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Regarding claims 7, 8, 17 and 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container assembly of Koziczkowski et al. with the an epoxy layer, as taught by Kane, since epoxy is a well known for it's adhesive properties.

Regarding claims 9 and 19, Koziczkowski et al. also does not disclose the thickness of the layers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container assembly of Koziczkowski et al. with the base layer having a thickness of up to about 1 mil, and the top layer having a thickness of between about 15 and 25 mils, since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 11, Koziczkowski et al. does not teach a gasket between the cover and container. Kane teaches that it is known to provide a gasket between a cover and container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container assembly of Koziczkowski et al. with a gasket between the cover and container, as taught by Kane, in order to better seal the assembly.

Response to Arguments

4. Applicant's arguments filed March 8, 2006 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958

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F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F .2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). Koziczkowski et al. teaches that it is known to apply an additional material to a closure ring and Kane teaches that it is known to insert a polymeric layer between the closure ring and the cover. The benefits of using a polymeric layer in the Kane device are the motivation for making the Koziczkowski et al. coating polymeric. The benefits of applying a material directly to the closure ring, such as reducing the number of parts and ease of assembly, are the motivation for applying the polymeric layer of Kane as a coating.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

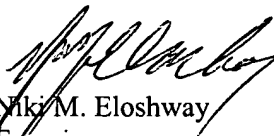
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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

nme


Niki M. Eloshway
Examiner
Art Unit 3727


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER